



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2005

Mr. James Hindman
President
San Angelo State University
ASU Station #11007
San Angelo, Texas 76909-1007

OR2005-02059

Dear Mr. Hindman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 220214.

Angelo State University (the "university") received a request for information concerning the severance agreement between a named individual and the university, and "any and all information, including reports, correspondence, memos, e-mails and notes, regarding [the named individual's] hiring, employment, job performance, evaluation and resignation/termination." You claim that the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You state that the university received the instant request for information on December 14, 2004. You did not request a decision from this office until January 5, 2005. Consequently, the university failed to request a decision within the period mandated by section 552.301(a) of the Government Code. Further, pursuant to section 552.301(e), a governmental body is required to submit to this office

¹The university has submitted three e-mails for our review. To the extent additional information existed on the date the university received the request for information, we assume it has been released. See Gov't Code §§ 552.301, .302.

within fifteen business days of receiving an open records request, among other things, a copy of the written request for information. You failed to submit to this office a copy of the written request. Because the university has failed to meet the requirements of section 552.301, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Although you raise sections 552.107 and 552.111 as exceptions to the disclosure of this information, these exceptions are discretionary and may be waived. *See* Open Records Decision Nos. 630 (1994) (section 552.107 is discretionary exception), 473 (1987) (statutory predecessor to section 552.111 may be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Accordingly, you have not shown such a compelling interest to overcome the presumption that the information at issue is public. As you raise no other exceptions to disclosure, you must release the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 220214

Enc. Submitted documents

c: Ms. Aubrey Hovey
San Angelo Standard-Times
34 West Harris Avenue
San Angelo, Texas 76903
(w/o enclosures)